BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 703(e)	)	
of the Telecommunications Act	)	
of 1996	)	**CS Docket No. 97-151**
	)	
Amendment of the Commission's	)	
Rules and Policies Governing	)	
Pole Attachments	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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TABLE OF CONTENTS

SUMMARY i

I. THIS PROCEEDING SHOULD FOCUS ON RATES, NOT ADOPTION OF MORE SPECIFIC RULES CONCERNING ACCESS TO POLES AND CONDUIT . 2

II. UTILITIES SHOULD BE ALLOWED TO CHARGE THIRD PARTY OVERLASHERS THE SAME RATES AS THE ORIGINAL ATTACHER . . 6

III. AT MOST, ONLY THE ATTACHERS WHOSE POLE ATTACHMENTS ARE GOVERNED BY SECTION 224 SHOULD BE COUNTED AS "ATTACHING ENTITIES" 10

IV. SECTION 224(g)'S IMPUTATION REQUIREMENT IS NOT RELEVANT TO THE ALLOCATION OF NON-USABLE SPACE COST IN THE NEW CARRIER FORMULA 18

V. THIRD PARTY OVERLASHERS SHOULD COUNT AS SEPARATE ATTACHING ENTITIES 19

VI. THE METHOD OF DETERMINING THE NUMBER OF ATTACHING ENTITIES SHOULD BE SIMPLE BUT REASONABLY ACCURATE 22

VII. THE COMMISSION SHOULD REJECT SUGGESTED CHANGES TO THE PRESUMPTION THAT EACH POLE ATTACHMENT OCCUPIES ONE FOOT OF SPACE 25

VIII. MAINTENANCE DUCTS SHOULD BE CONSIDERED NON-USABLE . . . 27

IX. THE COMMISSION SHOULD ALLOW UTILITIES TO USE THE ALTERNATIVE METHOD FOR PRICING CONDUIT SPACE SUGGESTED BY ICG 30

X. THE COMMISSION SHOULD PROVIDE SIMPLE, CLEAR GUIDELINES FOR APPLYING SECTION 224 TO CABLE SYSTEMS THAT DO NOT SOLELY PROVIDE CABLE SERVICE 31

XI. CONCLUSION 37

Summary*

A number of commenters seek to have the Commission adopt rules concerning access to poles and conduits that are more specific than, or different from, the guidelines adopted in the Local Competition Proceeding. This proceeding should focus on rates, not adoption of more specific rules concerning access to poles and conduit. Further, adoption of more specific rules at this time would conflict with the Local Competition Proceeding's approach of adopting guidelines of general applicability, determining the reasonableness of other access conditions on a case-by-case basis and monitoring the effect of this approach to determine whether additional guidelines are needed. The Commission has not had sufficient time since the adoption of this approach just over a year ago to evaluate its impact. In fact, some of the more specific rules sought by commenters are still the subject of reconsideration in the Local Competition Proceeding.

However, it would be appropriate for this proceeding to address the rate impact of particular access arrangements that are likely to occur. For example, if third parties overlash their facilities on existing attachments, utilities should be allowed to charge the overlasher the same rate as the original attacher. As even attachers recognize, overlashing parties do in fact

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*The abbreviations used in this Summary are defined in the body of these Reply Comments.

impose substantial additional burdens on the pole owner, such as more difficult maintenance and repair of each party's facilities, costs associated with "delashing," increased risk that the original attachment will break, increased coordination and other risks. Besides, charging different rates to the original attacher and the overlashing entity would be discriminatory.

The most important issue in this proceeding is to determine how to count "attaching entities" for purposes of allocating the cost of non-usable space. While several commenters present reasonable arguments for only counting those entities that provide telecommunications services, SBC submits that the best approach is to count all entities whose pole attachments are governed by Section 224, i.e., cable operators and telecommunications carriers other than ILECs. By drawing a line based on the definitions in Section 224, not only would the Commission recognize that the ILEC, as pole owner, is already responsible by default for at least one-third of the non-usable space cost, it would also avoid inconsistencies in the logic of other approaches. For example, it is illogical for AT&T to argue -- based on an unexpressed description of "attaching entities" it believes to be implied in legislative history -- that one should count "all" entities, but then, to exclude electric utilities unless they are providing telecommunications services. If provision of telecommunications services is the relevant criterion, then it should be relevant for all "attaching entities."

Likewise, government agencies should be disregarded in determining the number of attaching entities, unless their attachments are used to provide a telecommunications or cable service.

Contrary to the suggestion of a few commenters, the imputation requirement in Section 224(g) does not support counting ILECs as "attaching entities" because it is a requirement concerning pricing of a utility's telecommunications or cable services or the use of a utility's pole attachments by an affiliate; it does not address the maximum rate chargeable to telecommunications carriers under Section 224(e). In any event, the utility's automatic one-third share of non-usable space cost is more than sufficient to cover the amount that Section 224(g) requires to be imputed.

Given that the purpose of Section 224(e)(2) is to recognize that the non-usable space "is of equal benefit to all entities attaching to the pole," the conclusion is inescapable that when a third party overlashes its line on an existing attachment, it should be counted as a separate "attaching entity." It is a separate business entity that receives a benefit from the use of pole space the same as the existing attacher.

The Commission should reject suggestions that it establish a complex, burdensome method of determining the average number of attaching entities. As MCI suggests, the utility should be allowed to use any business records it has of the number of attaching entities on a company- or state-wide basis. If such

records are not sufficient, then the utility should be allowed to conduct periodic surveys to estimate the average number on a company- or state-wide basis. The attacher should not be allowed to rebut the results of the utility's survey with a survey of a different geographic area. If area-specific surveys are allowed at all, they should only be at the option of the utility.

The Commission should also reject suggestions that it adopt arbitrary presumption as to the number of attaching entities. The number of attaching entities will vary widely between states, regions and utilities and the difficulty of overcoming such presumptions makes them, as a practical matter, irrebuttable standards.

In contrast, the Commission should retain the presumption that each pole attachment occupies one foot of space. This is a long-standing and well-established principle based on the original legislative history of the Pole Attachment Act. The alternatives are unnecessarily complex and have little, if any, connection to reality.

A few commenters argue that the maintenance duct cannot be considered non-usable space because it is in fact "used" for maintenance purposes. Although these arguments admit that the maintenance duct is an essential component of a conduit system, the maintenance duct cannot be considered usable space if it is available to all attachers only for maintenance, emergency or repair purposes. The maintenance duct is only usable on a temporary basis during the period of the maintenance or repair

activities. Thus, it is not usable in the sense of being available for permanent occupancy pursuant to a license from the utility.

In view of the difficulty of ascertaining whether a cable system, or a portion of it, is being used to provide any service other than cable service, utilities should be allowed to use simple procedures for applying Section 224 to cable systems that do not solely provide cable service. The new formula should be applied on a system-by-system basis, instead of attempting to apportion the cable system's liability based on methods of estimating the extent to which the cable system is used to provide cable service versus other services.

The Commission should also provide simple guidelines concerning the specific services that a cable operator may provide over its cable system that would be considered cable service for purposes of Section 224(d). A cable operator that provides information services, enhanced services, Internet service or any two-way communications services over its cable system should not qualify for the cable operator rate under Section 224(d) because it is not exclusively providing cable service. When a cable operator provides Internet services or other enhanced services to its subscribers, it is not exclusively providing cable service because these services are not cable services that are subject to Title VI regulation. Such non-cable services may be accessible via a cable system, just as they may be accessible via the telephone network, but that alone does not

make them cable service or telephony. Even as amended by the 1996 Act, Title VI reflects that cable service continues to be primarily a means of providing one-way transmission of video or other programming. When a cable system becomes the transmission path for two-way communications or a means of transmitting data or information chosen or created by the customer between points specified by the customer, then it is no longer exclusively providing cable service.

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In the Matter of	)	
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Implementation of Section 703(e) of the Telecommunications Act of 1996	)	CS Docket No. 97-151
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Amendment of the Commission's Rules and Policies Governing Pole Attachments	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communication Inc. ("SBC") hereby submits these Reply Comments on behalf of its subsidiaries, Southwestern Bell Telephone Company ("SWBT"), Pacific Bell and Nevada Bell, in response to Comments filed on September 26, 1997, pursuant to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above captioned proceeding. In the NPRM, the Commission indicated that it is not necessary for parties to file duplicate comments to address the same issues already dealt with in filings responsive to the Pole Attachment Notice in CS Docket No. 97-98.[1] Accordingly, to the extent that commenters have made substantially the same arguments presented in CS Docket No. 97-98, SBC incorporates by reference its comments and reply comments filed in that proceeding as its response to the duplicate comments filed in this proceeding.

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[1] Amendment of Rules and Polices Concerning Pole Attachments, CS Docket No. 97-98, Notice of Proposed Rulemaking, FCC 97-94, released March 14, 1997 ("Pole Attachment Notice").

I. THIS PROCEEDING SHOULD FOCUS ON RATES, NOT ADOPTION OF MORE SPECIFIC RULES CONCERNING ACCESS TO POLES AND CONDUIT.

A number of commenters seek to have the Commission adopt rules concerning access to poles and conduits that are more specific than the guidelines adopted in the Local Competition Proceeding. In fact, some of these suggested rules either were rejected, or are still pending, in the Local Competition Proceeding. Examples include wireless access to utility poles and rooftop space,[2] access to private right-of-way,[3] and the use of formal written pole attachment agreements.[4] Just over a year ago in the Local Competition Proceeding, the Commission adopted a few rules and guidelines of general applicability.[5] The Commission indicated that it would "monitor the effect of this approach and propose more specific rules at a later date if reasonably necessary...."[6] It would be inappropriate for the Commission to reconsider guidelines adopted or rejected in the Local Competition Proceeding, especially given that reconsideration is pending, in some cases on the very same issues. In any event, the Commission has not had sufficient time to "monitor the effect of [its] approach" of adopting limited

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[2] Teligent passim; Winstar passim.

[3] Teligent at 6-7.

[4] ICG at 9-14, 24-26.

[5] Local Competition Order, ¶1143,

[6] Id.

guidelines and allowing "the reasonableness of particular conditions of access by a utility [to] be resolved on a case-specific basis."[7] The Commission should reject all suggestions by commenters to adopt more specific rules governing access, particularly in this rate proceeding.[8]

While the Commission should not adopt more detailed access rules in this proceeding, it would be appropriate for the Commission to address the rate impact of particular access arrangements that are likely to occur, such as overlashing by multiple parties on the same strand. As explained in SBC's Comments, the Commission should not mandate multi-party overlashing, but if a utility voluntarily allows it, then the Commission should provide guidelines for computing the proper rate to be paid by each attacher, including the overlashers.[9] Those access configurations that are less likely to occur or which are the subject of other pending proceedings do not require these types of rate guidelines.

While SBC does not believe that the Commission should address access issues in this proceeding, SBC does address some of the more salient access rules sought to be imposed by

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[7] Id.

[8] The Commission acknowledged in the NPRM that this was the proper approach: "In this Notice we are not addressing the access or safety provisions, as those issues are more appropriately addressed in the context of the Local Competition Provisions Order." NPRM, ¶36.

[9] SBC at 7-14.

commenters, in case the Commission decides to provide guidance here despite its previous pronouncements in the Local Competition Proceedings concerning a monitoring and case-by-case approach.

As an example of an access issue that is out of place in this rate proceeding, a couple of commenters seek a rule that utilities must allow access without requiring any advance permit application or notice.[10] In effect, these commenters are arguing that they should have free access to utility poles without giving the utility an opportunity to evaluate a request for access based upon the safety, reliability, general engineering and other principles adopted in the Local Competition Proceeding. Such arguments should have been presented (to the extent they were not) in the Local Competition Proceeding. In that proceeding, the Commission recognized the utility's need to evaluate requests for access based upon capacity, safety, reliability and general engineering principles.[11] Arguments to dispense with requests for access are thus contrary to the Local Competition Proceeding.

In any event, even some attachers, such as ICG, agree that a permitting and preapproval process is necessary to ensure the safety, reliability and integrity of poles. For example, ICG states:

> ICG agrees that attaching entities generally should be required to coordinate the installation of their facilities with the

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[10] Comcast at 3-5.

[11] Local Competition Order, ¶¶ 1143-1149, 1151, 1176

> owner of the pole.... Failure to do so can result in safety problems and can increase make ready expenses for other parties because of the inaccuracies in the utility's records, as well as the potential for uncompensated occupation of utility poles. All poles benefit from the utility's role as a clearing house for safety and space assignment issues, and all suffer when that role is bypassed.[12]

The Commission addressed this issue in the Local Competition Proceeding by adopting a 45-day requirement for access.[13] Those arguing that the utility need not approve or even be notified of the placement of additional facilities on the poles ignore not only the guidelines established in the Local Competition Proceeding, but also the increased burdens and risks that such facilities can truly present, as noted in ICG's comments.

The Commission should reject these and other suggestions for duplicative or overlapping access requirements already addressed, expressly or impliedly, in the Local Competition Proceeding.

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[12] ICG at 23. While ICG recognizes the need for a pre-approval process, it inconsistently argues that attachers should be allowed to proceed to install attachments before entering into an agreement governing the relationship between the parties. ICG at 9-14. Although this issue is also beyond the scope of this proceeding, as it was addressed by the general guidelines in the Local Competition Proceeding(¶¶1122, 1160), SBC submits that a reasonable alternative would be for the parties to sign an interim agreement governing their relationship pending resolution of the attacher's objections to any of the terms and conditions of the agreement. Otherwise, there would be an inadequate understanding governing the relationship between the parties, including the terms of the permitting and preapproval process, under applicable state law. Further, ICG's approach would remove most, if not all, of the incentive the attacher would have to ever reach an agreement on the disputed terms and conditions.

[13] Local Competition Order ¶¶1224-1225.

II. UTILITIES SHOULD BE ALLOWED TO CHARGE THIRD PARTY OVERLASHERS THE SAME RATES AS THE ORIGINAL ATTACHER.

To the extent that utilities voluntarily allow multi-party use of individual attachments, the utility should be allowed to charge the overlasher and the original attacher the same pole attachment rates. Several commenters contend that the overlasher should not have any liability with respect to the usable space, while others contend overlashers should not have any additional liability whatsoever. For example, AT&T states:

> Payments by the existing attacher pay for the use of the entirety of the leased space . . .. And, no additional costs are imposed on the pole owner . . .. [N]o additional space is actually occupied by the overlasher. . . . Overlashing does not impose the same type of burden on a pole as the original attachment. Because overlashing and third party use of existing capacity do not use additional pole space, the owner should not be permitted to collect an additional charge.[14]

As explained in SBC's Comments, the pole owner has every right to expect compensation directly from every carrier and cable operator using its poles.[15] As even attachers (ICG and MCI) recognize, overlashing parties do in fact impose substantial additional burdens on the pole owner.[16] They also do occupy additional space in a manner that "often has a greater effect on

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[14] AT&T at 5-9. See also Adelphia at 2-3.

[15] SBC at 9-12.

[16] ICG at 20-21; MCI at 11.

wind loading than the installation of a separate cable."[17]

Moreover, as MCI observes, it would be discriminatory to require overlashing at no charge.[18] The overlashing party benefits from the use of the attachment the same as the original attacher. Neither one should be given preferential access to the utility's poles. In the case of the original attacher, it should not obtain any right to sublease or share space with other parties, as that, in effect, would give the attacher the equivalent of an ownership interest in the pole. In the case of the overlasher, it should not get a free ride, in whole or in part.

SBC agrees that the original attacher should be able to overlash additional cables on its own original attachment, subject to engineering and safety standards, and without being liable for any additional charges for the overlashed cables.[19] However, overlashing by third parties is an entirely different matter. As MCI recognizes, third party overlashing imposes additional costs and burdens, such as costs associated with "delashing", increased risk that the original attachment will

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[17] ICG at 20.

[18] MCI at 7.

[19] See, e.g., US West at 10. See also Ex Parte Letter dated September 24, 1997 from Christine C. Gill, McDermott, Will & Emery, to William F. Caton, FCC (discussing safety considerations relating to pole capacity).

break, and other risks.[20] ICG likewise recognizes the additional burdens caused by third party overlashing, such as the increased coordination required.[21] For example, overlashing cables makes it more difficult to maintain and replace each individual cable and in the event of a default by one of the overlashed parties, this added responsibility may fall upon the utility as the "premises" owner. Similarly, risks of liability for accidental injuries or other damages that would not otherwise be incurred are elevated by increased multi-party use of attachment space and a single adverse liability judgment could wipe out all of the revenue received for pole attachments for an entire year. These and other added burdens of third party overlashing justify the imposition of a separate and equal charge to the overlasher, in the event the utility allows third party overlashing at all.

MCI's suggested solution is to view overlashing as "effectively expanding usable space." However, that is not a good approach to application of Section 224 to multi-party space sharing arrangements.

First, the Commission should not divest the utility pole-owner of control of segments of its poles and, in effect, give it to each of the original attachers. Because overlashing will only occur if the utility chooses to allow it, the Commission cannot assume that there will be overlashing to the degree that MCI

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[20] MCI at 11-12.

[21] ICG at 20-21.

argues.

Second, even if overlashing is allowed voluntarily by the utility, the attachment rate should not be reduced to ever smaller fractions based on theoretical numbers of overlashing entities. Further, the rate ceiling established by Section 224 has always been applied as a constraint on the rate paid by an individual attacher.[22] Thus, the Commission should not require a reduction in the rate paid by one attacher based upon what another attacher is paying. For example, the fact that utilities recovered substantially more than the maximum regulated rate from carriers prior to the 1996 Act would not have been any basis to reduce the rate charged to cable operators. Likewise, attachers that are neither cable operators nor carriers, may be charged substantially more than the regulated rate even after the 1996 Act, but that unregulated recovery of additional monies should have no impact at all on the rate charged under Section 224. The rate computed under Section 224 should be viewed as the standard against which each individual attacher's rate is compared, not a constraint on the maximum cost recovery for the entire pole[23] or

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[22] For instance, SBC is unaware of any reported pole attachment case where an attacher has attempted to pursue a complaint on grounds that the utility was overcharging a third party attacher and thus recovering more than the maximum rate from the two attachers combined.

[23] Even if it is viewed as a constraint on the maximum recovery for those segments of the pole not occupied by other attachers whose occupancy is beyond the scope of Section 224, it is very unlikely that the utility would overrecover due to the vacant space the utility is carrying for potential future use.

with respect to particular segments of the pole.

In summary, SBC submits that whether overlashing by third parties is allowed should be determined by utilities, not by the Commission or by attachers themselves. However, if overlashing is voluntarily permitted by a utility, it should be allowed to charge each entity the maximum rate based on Section 224 and a deemed occupancy of one foot for each overlashing entity.

III. AT MOST, ONLY THE ATTACHERS WHOSE POLE ATTACHMENTS ARE GOVERNED BY SECTION 224 SHOULD BE COUNTED AS "ATTACHING ENTITIES"

The widest variety of views was reflected in comments concerning the method of allocating the cost of non-usable space based on the number of attaching entities. While, on one extreme, commenters contend that one should count all or most of the attachments on the pole, others present reasonable arguments for counting only those entities that provide telecommunications services. For the reasons set forth in SBC's Comments, SBC submits that the best approach is to count all entities whose attachments are governed by Section 224.[24] Those whose attachments are not governed by Section 224 should not play a part in the determination of the portion of non-usable space costs of those who are subject to Section 224 because to do so is to impose the presumptions and requirements of Section 224 on

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[24] SBC at 17-24.

transactions that fall outside of its scope.[25] A further consequence of an overbroad interpretation of "attaching entities" is that ILECs would be double counted because they would be held responsible not only for the statutory one-third as pole owners but also an additional share if counted as an "attaching entity."[26]

Some commenters, such as Ohio Edison, make reasonable arguments for excluding cable operators that only provide cable service from the term "attaching entity" in Section 224(e)(2). Under this interpretation, "attaching entities" would only include those entities paying rates governed by the new carrier formula pursuant to Section 224(e).[27] However, it is more consistent with Section 224 to construe "attaching entities" in terms of the definitions in Section 224(a) applicable to the entire section of the statute. As a number of commenters observed, only cable operators and telecommunications carrier can have "pole attachments" and Section 224 expressly excludes ILECs from the definition of "telecommunications carrier." "Attaching entities" should be construed as including only those entities capable of having "pole attachments" for purposes of Section 224.

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[25] American Electric Power Service Corp. at 41 ("The FCC would be improperly extending the scope of the Pole Attachments Act in contravention of Congress' explicitly stated intent if it were to count ILECs as attaching entities when allocating the costs associated with unusable space.")

[26] SBC at 21-23.

[27] Ohio Edison at 35-41.

Otherwise, if the Commission does not draw a line based on the statute itself, then "attaching entities" would be construed too broadly to include a wide variety of entities that might make some use of poles, but who should not be governed by Section 224.

Inconsistencies in logic also result if one ignores the definitions of Section 224. For example, while AT&T contends that all of the entities identified by the NPRM should be considered "attaching entities", it does not count electric utilities unless they provide telecommunications services.[28] AT&T reasons as follows:

> In the Conference Report on what would become the Telecommunications Act of 1996, the Committee explained that "[n]ew subsection 224(e)(2) establishes a new rate formula charged to telecommunications carriers for the non-usable space of each pole. Such rate shall be based upon the number of attaching entities." ... Cable companies, telecommunications carriers, government agencies, and utilities providing telecommunications services all fit **the description** of an attacher for these purposes.[29]

Unfortunately, the legislative history did not provide any such "description" of what should be considered an "attaching entity." The best guidance is set forth in the definitions of "pole attachment" and "telecommunication carrier" in Section 224. The logical inconsistency in AT&T's line of reasoning is that it wants to include "all" entities, but then it excludes electric

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[28] AT&T at 11.

[29] Id. (boldface emphasis added).

utilities unless they are providing telecommunications services. Attempting to follow AT&T's logic, i.e. that the criteria is whether a company fits the description of an attacher implied in the legislative history, one can find no relevant distinction in the legislative history of Section 224 between electric utilities based upon whether they are providing telecommunications services. If provision of telecommunications services were the relevant criterion, then it would be relevant to all "attaching entities" and not merely to electric utilities. On the other hand, a reasonable distinction that has a basis in the statute can be drawn between those attachers governed by Section 224 and those who are not.

In contrast to AT&T, MCI proposes a more limited interpretation of who would be considered "attaching entities." MCI contends that one should only count the attachments that are used to provide telecommunications services, i.e. those that are subject to the new carrier formula under Section 224(e).[30] MCI properly recognizes that the term "attaching entities" has to be limited by the context of the statute.[31] However, the inconsistency in MCI's reasoning is that it argues for the

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[30] MCI at 12-13.

[31] Id.; Cf. Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995, CCBPol 96-13 et seq., Memorandum Opinion and Order, FCC 97-346, released October 1, 1997, ¶¶184-185 (Although phrase "any entity" in Section 253 was not expressly limited to private entities, Commission so construed it.).

exclusion of cable operators that only provide cable service because they are not subject to Section 224(e) rates, but it fails to recognize that the same is true of ILECs who are excluded from Section 224 altogether as attachers.

Further, as SBC and others explained in their comments, when the ILEC is the pole owner it is responsible by default for at least one-third of the non-usable space cost.[32] The one-third share that is not allocated was intended to be the ILEC pole owner's share of the non-usable space cost, contrary to MCI's attempted rationalization of this one-third share. According to MCI, the one-third share is based on the electric utility's share of the usable space. However, the numbers do not add up because electric utilities do not occupy 4.5 feet of usable space as MCI contends; rather, they occupy the top 6 feet of the pole. It is more consistent with the statute and the legislative history discussed in SBC's Comments[33] to view the one-third allocation as belonging to the ILEC or other pole owner. Therefore, it would be unfair and contrary to this one-third allocation to count ILECs as "attaching entities" for purposes of allocating an additional share of an non-usable space cost. Rather than considering the one-third share as being the electric utility

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[32] Ameritech at 11-12; Bell Atlantic at 6 & n.13; GTE at 3, 11; US West at 6. Electric utilities similarly argue that the utility as pole owner is already responsible for the cost of one-third of the usable space. E.g., Duquesne at 38, 40; Electric Utility Coalition at 4.

[33] SBC at 21-23.

share, as MCI suggests, it is more logical to consider this to be the share of costs attributable to the ILEC or other utility pole-owners whose attachments are not governed by Section 224.

There are also inconsistencies in the reasoning of those who argue that government agencies should be counted as attaching entities. For example, the NCTA contends that "telecommunications attachments by government agencies should be counted,"[34] but then it says that the purpose for which government agencies should be counted include "pole attachments for public use" such as "traffic signals, festoon lighting, or specific pedestrian lighting."[35] These types of government attachments are clearly not telecommunications attachments, as NCTA apparently contends. As SBC already explained in its Comments, SBC also disagrees with the suggestion supported by NCTA that the burden and cost of government agency attachments should be assigned exclusively to the pole owner, rather than being allocated equitably and on a competitively neutral basis among the users of the poles.[36] Even attachers, such as MCI and ICG, agree that government agencies should be disregarded in determining the number of attaching entities, unless the attachments are used to provide a telecommunications service.[37]

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[34] NCTA at 19.

[35] Id.

[36] SBC at 20-21.

[37] MCI at 14; ICG at 33-35.

Under the criteria that should be applied, that is, whether the attaching party is governed by Section 224, government agencies that are in fact using utility poles to provide cable or telecommunications service would be considered "attaching entities." The exclusion of government agencies that are not service providers governed by Section 224 is also consistent with the view that electric utilities are excluded unless they provide telecommunications service.

In defining "attaching entities" for purposes of Section 224(e), the Commission should avoid a result-oriented approach that ignores the language of the statute. For instance, the Commission should discount AT&T's exaggerated claims of the amount of the increase resulting from application of the carrier formula. AT&T claims that:

> [T]he Commission's proposed adjustments to the maximum permissible rate . . . could generate a rate more than 500% higher than the current formula if the formula were applied with an (improper) assumption of a single attacher or 324% higher with two attachers. Indeed, the two formulas will not generate the same rate until there are nine attachers.[38]

It is completely unrealistic for AT&T to assume that there would only be one attacher and it is not even reasonable to assume only two attachers, unless one projects virtually no facilities-based competition in the local exchange by the year 2001. In contrast, other commenters suggest that the number of attachers may be between three and six. Even assuming two attachers, the amount

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[38] AT&T at 3-4.

of the increase is actually 225%, not 325%, of the original rate. Further, in real numbers, this percentage may be equivalent to only a few dollars. For example, as shown in Exhibit "A" attached to these Reply Comments, assuming a more realistic number of attachers, such as three or four, the rates would increase by a total of about $2.55 to $4.00 or about $0.50 to $0.80 per year during the phase-in period.[39] AT&T's contention also exaggerates the impact compared to the rates that telecommunications carriers paid prior to the 1996 Act(between $5 and $7 per year in SWBT's territory). Prior to the 1996 Act, rates for carrier attachments were not subject to Section 224, and thus, they were already at higher levels comparable to those resulting from the carrier formula. Thus, the long-term impact is a minimal, if any, increase, compared to the rates carriers were paying prior to the 1996 Act. In effect, the 1996 Act generally provides carriers a discounted rate during the initial five years after its enactment and protection against unwarranted increases thereafter. In addition, Congress sought to avoid the impact of a sudden increase in rates (and it apparently anticipated a substantial increase) by adopting a five-year phase-in. The Commission should ignore AT&T's tactic of exaggerating the impact by its use of percentages and unrealistic assumptions. Instead, the Commission should adopt Section 224's own definitions of

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[39] In the case of 3 and 4 attachers, the dollar amount of the increase is 129% and 80%, respectively, of the original rate.